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GAME LAWS.

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Great Britain. Laws, statutes,
" THE etc.

GAME LAWS;

BEING

**A COMPREHENSIVE AND FAMILIAR TREATISE UPON
THAT SUBJECT;**

COMPRISING ALL THE

Statutes and Resolutions of the Courts

RELATING TO

**DEER, HARES, RABBITS, PHEASANTS,
PARTRIDGES, GROUSE, FISH,**

AND

OTHER OBJECTS OF SPORT;

TOGETHER WITH

**The Qualifications, by Estate and Certificate, for killing Game;
The Appointment and Authority of a Game-Keeper;
The Mode of recovering Penalties under the Game-Laws;
The Law concerning Trespass in the Pursuit of Game;
And the general Law relating to Dogs.**

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INTRODUCTION.

Concerning the Origin, History, and Principles of the Game Laws.

AT the first distribution of things, as mentioned in the sacred writings, the all-bountiful Creator gave to *man*, "dominion over the fish of the sea, over the fowl of the air, and over every living thing that moveth upon the face of the earth." As this appears to have been a *general* and *unqualified* donation, it is natural to imagine that it was meant to extend to *all mankind alike*, without any preference or exclusive right in one man more than another. In the primitive ages of the world, therefore, we are to suppose that every one took from the common stock, without control or restraint, whatever his wants or inclination led him to desire; and, whilst mankind continued in a state of primeval simplicity, no inconvenience would arise from this general liberty: but when they began to increase in number and connections, and the establishment of society gave rise to complicated interests, this method of satisfying the demand of *individuals* was found to be no longer practicable, consistently with the wants and interests of the *whole*, as the good

order of civil government was constantly distracted by the turbulent contentions of various persons striving to retain or acquire possession of the same object. It became necessary, therefore, to fix upon some certain and permanent rules for the acquisition and enjoyment of the products of nature, that no one might encroach upon the property of another. This in respect of the occupation and use of the soil itself, and of other permanent and stationary objects was soon effected ; but in respect of such as were of a more volatile and instable nature, as Deer, Hares, Pheasants, and other animals *feræ naturæ*, they were, on account of the difficulty of acquirement, and the uncertainty of possession when gained, allowed still to remain in common, and continued, therefore, as by the primary laws of nature, to be the property of those who could first take them. But, at this day, we observe that many animals, of the above description, are no longer reckoned among the common property of mankind, and the right of the first taker ; but, by the municipal laws of England, and of most other nations, are deemed to be *appropriated* property, belonging exclusively to persons of a particular description, who, and who only, are allowed the privilege of taking or destroying them.

With regard to the rise and progress of these prohibitions, it will be found, Sir William Blackstone observes, (2d vol. Com,

413.) that they were introduced into Europe at the same time, and by the same policy, as gave birth to the feudal system of *tenures*. When the leaders of the northern ravagers of Europe, in the third century, came to settle the economy of a vanquished country, their policy led them to keep the *rustici* or natives, in as low a condition as possible, and especially to prohibit them the use of arms. Nothing could do this more effectually than a prohibition of hunting and sporting; this right, therefore, was reserved to themselves, and those on whom they chose to bestow it; which were only the capital feudatories, or greater barons. And accordingly we find, in the feudal constitutions, one and the same law prohibiting the *rustici* in general from carrying arms, and also proscribing the use of nets, snares, and other engines for destroying the game.

In England, hunting has ever been esteemed a princely diversion; and, in the time of the Britons, who derived much of their subsistence from the chace, the whole island was replenished with all sort of game; but, under the Saxon government, when the lands became to be enclosed and cultivated, the wild and untameable animals naturally fled into the woody and desert tracts, which (not having been disposed of in the first distribution of lands) were held to belong to the sovereign, who naturally reserved the game with which they abounded for his

own use and diversion ; but every *freeholder* had a right of sporting upon his *own territories*, provided he abstained from these the king's forests. Upon the Norman conquest, however, a new doctrine took place, and the liberty of pursuing and taking such animals as were accounted game, was then held, upon whatever territory found, to belong to the king only, or to such as acted under his authority.

This right, thus newly vested in the crown, was exerted with the utmost rigour, and the most horrid tyrannies were exercised in order to preserve the game for the royal diversion. This occasioned the *charta de foresta*, by which many forests were disafforested, and wholesome regulations made in respect to such as remained ; and we are happy to observe, that a variety of subsequent statutes, with the long acquiescence of the crown, has at length rendered this prerogative no longer a grievance to the subject.

From this deduction, it appears, that the sole right of taking and destroying game belongs exclusively to the king, and such as he may authorize (*a*), who are the only persons that can acquire any property, how-

(*a*) This doctrine of Mr. Justice Blackstone has lately been controverted by the ingenious editor of his admirable Commentaries, but with what success is left to the judgment of the reader, See 2. Com. 418. note.

ever fugitive and transitory in the animals coming under that denomination.

As to the justice of this exclusive privilege, and of the innumerable restrictions recently introduced by the legislature in respect of the persons permitted to kill game, it may be observed, that though, by the *law of nature*, every man has an equal right of pursuing and taking to his own use all such creatures as are properly *feræ naturæ*; yet it follows, from the very end and constitution of society, that this natural right, however unequivocal in itself, may be abridged or controlled by such restrictions as it has been found expedient to impose for the benefit of the *community*. An authority, we consequently find, has been exerted by the municipal laws of every civilized nation, which have generally, as with us, invested the privilege of hunting such animals as are held in peculiar estimation, in the sovereign of the state only, or persons acting under his authority. The reasons which concurred in making these constitutions were probably—for the preservation of the several species of these animals, which, by a general liberty, would be extirpated; for the encouragement of agriculture, by giving every man an exclusive privilege over his own soil—for the prevention of idleness and dissipation in husbandmen, artificers, and others of lower rank, which would be the unavoidable consequence of an universal license—and lastly and principally, for the prevention of popu-

lar insurrections, and resistance to the government, by disarming the bulk of the people.

Having now briefly inquired into the origin and history of the Game Laws, and suggested the political reasons and principles on which they appear to be founded, we shall proceed to enumerate such particular provisions respecting them, as are now subsisting by the Laws of England; in pursuing which inquiry, we shall endeavour to be as explicit as the nature of the subject may require, without rendering our Treatise too bulky to answer the purpose of a Pocket Companion for the Sportsman.

CHAP. I.

Of the Qualification by Estate, entitling Persons to kill Game, and the Penalties inflicted on Persons not so qualified.

IT may be observed as a prelude to the substance of the present chapter, that the Game Laws do not, properly speaking, *qualify* or *authorize* any one, except in the single instance of a gamekeeper, to take or kill game ; but, in order to prevent the formal process, and other inconveniences of an action by the *person injured* (who might perhaps remit the penalties) the statutes made for the preservation of game inflict *additional* penalties to be recovered by any of the *king's subjects*, from certain persons of inferior rank, who may be found offending in this particular; but it does not follow that persons *excused* from *these additional penalties* are therefore authorized to kill game ; the circumstances of being possessed of 100l. *per ann.* for instance, is not so properly a *qualification* as an *exemption* ; and persons, so *exempted* from the penalties of the Game Laws, are, notwithstanding, liable as well to actions of trespass, by the owners of land, as also, if they kill game within any royal franchise, to actions, by such as have the right of free warren therein. See 2 Black. Com. 418.

Having premised thus much, we shall pro-

ceed to connect together, and arrange in the plainest manner we are able, the substance of the several acts of parliament relative to the head of "Qualification by *Estate*", and, as we go along, shall occasionally advert to the constructions they have received from the courts.

The estate required to exempt the possessor from the penalties of the Game Laws has many times varied. In the reign of Richard the 2d (which is the first time we meet with any defined qualification) it was only 40s. in the reign of James the first, it was advanced to 10l. and in that of Charles the 2d (when the last qualification act was passed), to 100l. *per ann.* This, however, has not been owing to any increasing spirit of monopolization in the legislature, but to the gradual alteration of the value of money, which has decreased nearly in the above proportion. As these several acts are still in force, and the prosecutor may resort to either of them, accordingly as he is inclined to be more or less severe against the offender, it will be necessary to insert them all, though not at equal length.

Stat. 13.
Rich. 2.
Hares.

The first qualification, (as we have said,) relating to the game, is found in statute 13 Rich. 2. c. 13.; by this it is enacted, that no *layman* who hath not lands or tenements of 40s. a year, or *clergyman* not being advanced to 10l. a year, shall have any greyhound, hound, or other dog to hunt, nor shall use any ferrets, hays, nets, hare-pipes, cords,

or other engines for taking or destroying *hares* or *conies*, or other *gentlemen's game*, on pain of one year's imprisonment, to be inflicted by the justices, at their quarter-sessions.

Then follows 1 Jac. 1. c. 27. (but repealed by 48 Geo. 3. c. 93. so far as concerns *hares*) by which it is provided, that every person, *unless* seized in his own or his wife's right of an estate of inheritance of 10l. a year, or of a life estate of 10l. a year, or goods to the value of 200l. or *unless* he be the son of a lord or knight, or the son and heir apparent of an esquire, who shall keep any *greyhound* for coursing of *deer* or *hare*, or any *setting dog* or *net* to take *pheasants* or *partridges*, and be thereof convicted by confession, or oath of *two* witnesses, before *two* justices, he shall be committed to gaol for three months, without he pay 20s. to the poor, or, after one month's imprisonment, be bound with two sureties, in 20l. each, not to offend again.

1 Jac. 1.
Deer,
Hares,
Pheasants, Partridges.

And by 7 Jac. 1. c. 11. (relating to *partridges* and *pheasants only*) there is an express provision, authorizing every person *having free warren*, and every lord of a *manor*, and also every *freeholder* seized in his own or his wife's right of lands or hereditaments, of the clear yearly value of 40l. by themselves or by their household servants duly authorized, to take *pheasants* and *partridges* in the *day time* between *Michaelmas*

7 Jac. 1.
Pheasants, Partridges.

and *Christmas*, on their own or master's free-warren, manor, or freehold.

22 and 23
Car. 2.
Game in
general.

The last statute relating to this head, and that which is most worthy of notice, is the 22 and 23 Car. 2. c. 25. whereby it is enacted, that every person, not having *lands or tenements, or some other estate of inheritance (a), in his own or his wife's right (b), of their clear (c) yearly value of 100l. or for a term of life (d), or having lease or leases of 99 years, or for any longer term, of the yearly value of 150l.* other than the son and heir apparent of an esquire, or other persons of higher degree *(e)*, and the owners

(a) A vicar, in respect of his church, has not an estate of inheritance, but for his life only.—*Caldecot's Cases*, 188.

(b) This is not to be understood of a *tenant by the curtesy*, but of one whose wife is living.—*Vide Co. Lit.* 351.

(c) On this word it has been held, that the estate must be clear of all mortgages or incumbrances created by the owners, or by those under whom he claims. *Caldecot's Cases*, 230. But an *equitable* estate of that value is sufficient.—*Ibid.*

(d) It has been determined, on this part of the act, that a tenant for life must have an estate of an 150l. to exempt him from the penalties of the Game Laws.—*Ibid.*, 188.

(e) 'Esquires are—1. The younger sons of noblemen, and their heirs male for ever.

and keepers of forests, parks, chases, or warrens, being stocked with deer or conies for their necessary use, in respect to the said forests, parks, chases, or warrens, are declared to be persons, by the law of this realm, not allowed to have or keep for themselves, or any other person (*f*), guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, low bells, hare pipes, gins, snares, or other engines, for the taking

2. The 4 esquires of the king's body. 3. The eldest sons of baronets, or knights of the Bath, and knights bachelors, and their heirs male in the right line. A justice of the peace is also an esquire for the time he is in the commission, but no longer.—*Mount*. Persons of higher degree than esquires are Colonels, Serjeants at law, and Doctors in the three learned professions; but neither esquires, nor any of these, are qualified to kill game, unless they have the requisite estate mentioned in the preceding part of the act; though their sons are qualified without any estate.—1 *Term Reports*, 44. This, however unreasonable it may seem, has been fully settled to be the true construction of the act,

(*f*) An unqualified person, therefore, cannot keep the dogs of a *qualified* person, a thing frequently required of a tenant by his landlord.

and killing of *conies, hares, pheasants, partridges, or other game*, but shall be prohibited to have, keep, or use the same.

Abstract
of qualifi-
cation act.

From the inaccurate composition and punctuation of the above statute, it may be proper to give the reader an abstract of the qualification it requires, as determined by the resolutions of the courts.

1. *Every person having lands or tenements, or other estates of inheritance, of the clear yearly value of 100l.*

2. *Or for term of life, or lease or leases for 99 years, or any longer term, of the clear yearly value of 150l.*

3. *The sons and heirs apparent of esquires, or of other persons of high degree.*

4. *The owner or keeper of any forest, park, chase, or warren.*

5. *The lord of any manor or royalty.*

6. *The gamekeeper of any lord or lady of a manor, provided he be a person qualified, or really and truly a servant to such lord or lady, or immediately employed and appointed to kill game for the sole use of such lord or lady.*—[These two last qualifications arise from stat. 5 Anne and 3 Geo. I. (*a*) hereafter mentioned.

5 Anne, c.
14. unquali-
fied per-
sons keep-
ing or
using dogs,
guns, &c.

We now come to 5 Anne, c. 14. s. 4. which is the act most frequently resorted to at this day, and indeed most efficacious in its tendency, for by this statute it is enacted,

(*a*) This act is repealed by the 48 Geo. 3. c. 93.

if any person, not qualified as above, shall keep or use (a) any greyhounds, setting-dogs, hays, lurchers, tunnels (b), or any other engines (c), to kill and destroy the game, and shall be thereof convicted, upon the oath of one witness, by the justice of peace where such offence is committed, he shall forfeit the sum of 5l. one half to go to the informer, and the other half to the poor of the parish (d), to be levied by

(a) These words being in the disjunctive, the bare keeping of one of these dogs is an offence, 1 *Str.* 496; as to the using, it has been determined, that walking about with an intent to kill game, is a using, within this statute. See 2 *Williams's Justice*, 2d edit. title GAME.

(b) This, being a penal act, must be construed strictly, and will not therefore extend, by any equitable construction, to other dogs, besides those here enumerated.

(c) It has been held, that a gun is not such an engine, the bare keeping of which is penal, it must moreover be shewn to be used for the destruction of game. 2 *Str.* 1098. It is also observable, that though the using a gun and a dog are both separately penal, yet, per Lord Kenyon, Ch. Justice, if a person go out with a gun and a dog the same day, he is subject to but one penalty. 7 *Term Rep.* 152.

(d) See 2 Geo. 3. c. 19, post. chap. xiv. page 69.

Lord Kenyon, Ch. Justice, said, that

Justices
and lords
of manors
may take
away
game, &c.

distress (*e*), under the warrant of justice, and for want of (*f*) distress, the offender shall be sent to the house of correction for 3 months for the first offence, and for every after offence 4 months: and any *justice of the peace*, or *lord or lady of manors*, are allowed to take away any hare or other game, and likewise any dogs, nets, or any other engines, which shall be in the custody of any person not qualified to keep the same, to their own use.

As may
game-
keepers
and others
by war-
rant.

And by the aforesaid stat. 22 and 23 Car. 2. c. 25. s. 2. it is provided, that *gamekeepers (g)*, or any other persons, by warrant of a *justice of the peace*, may, in the day-time, search the houses, or other places, of any such persons prohibited by this act to keep or use any dogs, nets, or other engines afore-

where several unqualified persons offend by going out and killing a hare, it has been determined that only one penalty can be recovered. 2 Term Rep. 713.

(*e*) It may not be improper here to mention, that goods, distrained for penalties under the Game Laws, are not *repleviable*, 1 Stra. 567.

(*f*) The justice, therefore, cannot commit, if the offender have effects sufficient to answer the penalty.

(*g*) It has been adjudged, that *gamekeepers*, as well as others, must have a warrant to authorize them to search. Comberb. Rep. 183.

said, and the same seize and keep for the use of the lord of the manor, or otherwise to cut in pieces or destroy the things so prohibited.

And by 1 Jac. 1. c. 27. s. 2. every person, 1 Jac. 1. c. 27. Penalty for killing game of any sort. who shall shoot at, kill, or destroy, with any gun, cross-bow, stone-bow, or long-bow, any pheasant, partridge, pigeon, heron, mallard, duck, teal, wigeon, grouse, heath-cock, moor-game, or any such fowl, or any hare (*h*), and the offence be proved, by the confession of the party, or by the testimony of two witnesses, upon oath, before two justices where the offence shall be committed, the party apprehended shall be committed to the common gaol for 3 months, unless he pay to the churchwardens of the parish where the offence was committed, or where he was apprehended, 20s. for the use of the poor for every pheasant, partridge, pigeon, &c. he shall so take or destroy, and also within one month after commitment become bound with 2 sureties, in 20l. a-piece, to the king, not to shoot at, kill, take, or destroy any of the said games, by the means aforesaid: and by the 7th of the same king, c. 11. s. 8. every person, who shall take, kill, or destroy any pheasant or partridge with setting dogs and nets; or with any nets, snares, or engines, proved by confession of the party, or the testimony of one witness, Pheasants and partridges.

(*h*) So far as concerns hares is repealed by 48 Geo. 3. c. 93. s. 1.

taken as aforesaid, shall forfeit the like sum, and enter into like sureties.

Officers
and Sol-
diers kill-
ing Game,
&c.

And by the *annual Mutiny Act*, if any *officer or soldier* shall, without leave of the lord of the manor, *under his hand and seal*, take, kill, or destroy, any *hare, coney, pheasant, partridge, pigeon, or any other sort of fowls, poultry, or fish, or his Majesty's game*, and be thereof convicted before a justice, on the oath of *one* witness, every officer, so offending, shall forfeit 5l. to the poor of the place; and every officer, commanding in chief upon the place, shall forfeit 20s. for every such offence committed by any soldier under his command; and, if such officer, after demand by the constable or overseer, shall not pay the penalties within two days, he shall forfeit his commission.

4 and 5
Will. and
Mary,
c. 23. Con-
stables,
&c. may
search for
game.

And by 4 and 5 W. and Mary, c. 23. s. 3. every *constable, headborough, and tithing-man*, being authorized by one justice of peace, is empowered to enter in and search (a) the houses of suspected persons *not qualified*; and in case any *hare, partridge, pheasant, pigeons, fish, fowl, or other game* (b),

(a) Though constables, &c. are authorized to *search* for game, no power is given them to *seize or take it away*; but this is probably *implied* from the *spirit* of the act.

(b) It was once doubted whether this act extended to rabbits kept in a private warren,

shall be found, the offenders shall be carried before a justice of peace; and if such persons do not give a good account how he came by such game, or shall not, in convenient time, to be named by the justice, produce the party of whom he bought the same, or procure some creditable person to depose upon oath the sale thereof, he shall be convicted by the said justice of such offence, and shall forfeit for every *hare, partridge, fish,* or other game, any sum not under 5s. nor more than 20s. one moiety to be paid to the informer, and the other to the poor of the parish where the offence is committed, to be levied by distress under warrant of the justice, and for want of distress the offender shall be committed to the house of correction, for a time not exceeding *one month*, nor less than *ten days*, there to be whipt and kept to hard labour.

And if any person so produced shall not give sufficient evidence of his innocence, he shall be convicted in the same manner as the person first charged, and so from person to person until the first offender be discovered.

By the same act, s. 10, after taking notice that great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons neglecting their trades and employ- Penalty against inferior tradesmen hunting, &c.

and it was held that it did not. 1 *Lord Raym.* 151.

ments, who follow hunting, fishing, and other game, to the ruin of themselves, and damage of their neighbours, it is enacted, that if any *inferior tradesman (a), apprentice, or other dissolute person* shall hunt, hawk, fish, or fowl (unless in company with the master of such apprentice duly qualified), such persons may be sued for their wilful trespass, on coming on any person's ground, and if found guilty shall pay the full costs.

The restrictions and penalties we have hitherto spoken of, it is to be observed, relate to such persons only as are not *qualified* under the 22d and 23d Car. 2. Those we shall *hereafter* have occasion to notice, relate (unless otherwise mentioned) as well to those who *are*, as those who are *not* qualified under that statute.

Observations.

As to the propriety of the provisions we have had occasion to enumerate, respecting the persons entitled or forbidden to pursue

(a) It has been adjudged, that if a person be an *inferior tradesman*, within the meaning of this act, it makes no difference as to his qualification by *estate*. 1 Lord Raym. 142. But who are, or who are not *inferior tradesmen* under this statute, is not fully determined; the better opinion, however, seems to be, that the question should, when it occurs, be left to a jury, see 2 Wils. 70. A *hunter*, however, has been held not to be within the meaning of the act. 1 Blac. Rep.

the diversions of hunting after game, we are silent: it ill becomes an individual, whatever may be his opinion, to arraign the justice of laws which the wisdom of successive parliaments has thought it expedient to provide and confirm.

CHAP. II.

Of the Qualification, by Certificate, for killing Game (a).

BESIDES the penalties and restrictions inflicted by the former statutes on persons of *mean estate*, who employ themselves in destroying the game of the kingdom.

It is enacted by 25 Geo. 3. c. 50. s. 2. 25 Geo. 3. c. 50. Persons, whether qualified or not, must take out a certificate. that *every person in Great Britain*, who shall use any dog, gun, net, or other engine, for the taking or destruction of game (b), (such

(a) It has erroneously (and hastily enough) been supposed by some, that the following act, requiring persons using guns, &c. for the destruction of game, to enter their names, and take out certificates thereof, operated as an exemption from the penalties inflicted by former statutes; so far from doing which, it *superadds additional* penalties, in case the further requisitions of this act are not complied with.

(b) See page 27, respecting killing *woodcocks, snipes, quails, landrails, and conies.*

person not acting as *gamekeeper* under a deputation duly registered) shall every year, previously to his using the same, annually take out a certificate (c) of having so done; and a certificate shall also be annually taken out, of every deputation of a gamekeeper (d) granted by any lord or lady of a manor in England or Wales.

Penalty
for killing
game
without
certifi-
cate.

And it is by the said act further enacted (s. 8), that if any person shall use any *greyhound, hound, pointer, setting dog, or other dog, or any gun, net, or other engine*, for the taking or destruction of any *hare, pheasant, partridge, heath fowl, (called black game) or grouse (called red game), or any other game whatsoever, without having obtained such certificate*, such person shall forfeit the sum of 20l. (*The Royal Family are exempted from this act.*)

Certifi-
cate does
not autho-
rize un-
qualified
persons to
kill game,
nor the
killing
game out
of season.

And it is further provided, by the said act, that the certificate thereby directed to be taken out *shall not authorize* any person to use any *greyhound, hound, pointer, setting dog, spaniel, or other dog, or any gun, net, or other engine*, for the taking or destruction of game, *at any time, or in any manner pro-*

(c) The duty on these certificates is 3l. 3s.

(d) The duty on a gamekeeper's certificate is 1l. 1s. the deputation must be on a deed stamp in addition.

hibited by former acts; nor shall authorize any person to use the same, *unless such persons shall be properly qualified* so to do under the laws now in being; but shall, notwithstanding such certificate, be liable to the same penalties as are inflicted by former acts now in force (a).

This act is modified, and other birds are designated as game, and the duties are to be collected in a different manner, by 48 Geo. 3. c. 55.

Whereby it is enacted, that every person, 48 Geo. 3. c. 55. who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any *woodcock, snipe, quail, or landrail*, or any *conies*, in any part of Great Britain, shall pay annually 3l. 3s. *woodcock, snipe, quail, landrail, and conies.*

If such person shall be a servant to any person charged in respect of such servant to the duties granted on servants by this act, and shall use any dog, gun, net, or other engine, for the purposes before-mentioned, upon any manor or royalty in England, Wales, or Berwick-upon-Tweed, or upon any lands in Scotland, by virtue of any deputation or appointment duly registered or entered as gamekeeper there, there shall be charged the annual sum of 1l. 1s.

The taking of woodcocks and snipes with nets or springes, and the taking or destroying of conies in warrens, or in any inclosed

(a) See ante, chap. i. page 13.

ground, or by any persons in lands in his or her occupation, either by himself or herself, or by his or her direction or command, are exemptions.

Sect. 1. Every person, who shall use, after the 30th June, 1808, any dog, gun, net, or other engine, for any of the purposes above-mentioned, shall, before he uses the same in any year, pay unto the collectors of the duties, for the parish, ward, or place, where he shall reside, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein directed; which certificate shall continue in force until and upon the 5th of April next after the time of issuing the same and no longer.

Sect. 2. Every collector, on application made to him by any person residing within the limits of his collection, and on payment of the duty, shall give a receipt, signed by such collector; for which receipt he shall be entitled to demand the sum of 1s. over the duty, as a compensation.

Sect. 3. Every receipt, delivered to the clerk of the commissioners acting for the district where the person resides, shall be exchanged for a certificate made out in one of the forms in this act, corresponding with such receipt, which certificate the said clerk is required, on demand, to make out and deliver gratis to such person in exchange for the said receipt.

Sect. 4. The receipts, so exchanged, to be entered by the clerks in books for that

purpose, and the receipts being exhibited to the commissioners, and examined by them, shall be a sufficient authority to cause an assessment to be made on the persons mentioned in such receipts in the sums paid by them, which assessments shall be as binding on the several collectors, and others acting in the execution of this act, and on the parishes and places for which such collectors shall have been appointed, as any assessment to be made by the commissioners under the regulations of the acts under which they act as commissioners; and the commissioners shall return duplicates thereof to the receiver-general, and to the commissioners for the affairs of taxes.

Sect. 5. The commissioners for the affairs of taxes shall cause a sufficient number of forms and receipts to be distributed amongst the several clerks and by them to the collectors.

Sect. 6. Appoints surveyor of the district to execute the duty of a clerk, where no clerk is appointed.

Sect. 7. Every master or mistress liable to the duties on servants, in respect of any gamekeeper, and every person, granting a deputation to the servant of any other person, who shall be duly charged to the said duty on servants, in respect of such servant, whether as gamekeeper, or in any other capacity, with power and authority to use any dog, gun, &c. for any of the purposes mentioned in this act, shall be at liberty to ob-

tain a receipt and certificate on behalf of such servant, on payment of the duty; and such receipt and certificate shall be a sufficient authority to assess the master or mistress, or person granting such deputation, and obtaining such receipt and certificate; and the certificate, to be issued thereupon, shall be deemed to exempt the servant or servants named therein, during their continuance in the same capacity and service; and also to exempt any servant or servants of the same master or mistress who shall succeed to the deputation of the same manor, or royalty, or lands, within the year for which the duty shall be so assessed, for the remainder of such year; and no such servant, in whose behalf a receipt and certificate hath been obtained, shall be required to obtain a certificate for himself, nor be liable to the duty, nor to any penalty by reason of not obtaining a certificate in his own name, or for not paying the said duty: Provided always, that every certificate, granted to any person acting under any deputation, shall, upon the revocation of such deputation, be from thenceforth void, and of no further effect, as to the person therein deputed; provided, that if any lord or lady of any manor in England, Wales, or Berwick-upon-Tweed, or proprietor of lands in Scotland, shall, on the revocation of any deputation, by virtue of which a certificate hath been granted for any year, making a new deputation within the same year, to any person in his or her service, or in the service of the same master or mis-

truss who shall have been charged, as well to the duties on servants as to the game duties granted by this act, it shall be lawful for the clerk to the commissioners of the district, and every such clerk is required in such case, to renew the certificate for the remainder of that year, in behalf of the person so newly appointed, without any duty or fee, by endorsing on such certificate the name and place of abode of the person to whom such last mentioned deputation or appointment had been granted, and declaring the same to be a renewed certificate, free of duty or fee.

Sect. 8. Enacts, that neither the duty nor certificate will authorize or enable any person to use any dog, gun, or net, or other engine, unless duly qualified so to do, under the law now in being.

Sect. 9. No certificate under this act, for any person acting under a deputation, shall be received in evidence, or be available in law in any prosecution, where proof shall be given of using any dog, gun, &c. out of the precincts or limits of the manor, for which such deputation was granted.

Sect. 10. If any person shall be found using any dog, gun, &c. for any of the purposes mentioned in this act, whereof such person shall be chargeable, by any assessor or collector of the parish where any such person shall then be, it shall be lawful for the assessor, collector, commissioner, or gamekeeper, inspector, or surveyor, or other

person assessed as aforesaid, or the owner, landlord, lessee, or occupier of land as aforesaid, to demand and require from the person so using such dog, gun, &c. the production of a certificate, which certificate every such person is hereby required to produce to the person so demanding the same, and permit him to read the same, and (if he shall think fit) to take a copy thereof; or in case no certificate shall be produced to the person demanding the same, then it shall be lawful for the person having made such demand to require the person so using such dog, gun, &c. to declare to him his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by this act; and if any such person shall, after such demand, wilfully refuse to produce and shew a certificate, or in default thereof, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment, every such person shall forfeit the sum of 20l.

Sect. 11. The commissioners for the affairs of taxes shall, every year, cause the names and residences of the persons to whom certificates have been granted for that year, to be inserted in the newspapers circulated in each county.

Sect. 12. If any person, after the 30th of June, 1808, use any dog, gun, &c. for any of the purposes mentioned in this act, without having obtained a certificate for the year

wherein such person shall so use such dog, gun, &c. every such person shall be liable to the duty of 3l. 3s. for that year, and shall forfeit the sum of 20l. over and above the duty; and the duty shall be assessed by way of surcharge in the district where the offence shall be committed.

The royal family are exempted from this act.

It may be proper here to subjoin a few Remarks on the *legal property* which persons duly qualified have, in particular cases, to the game they are in pursuit of. This, in general, continues so long *only* as it remains *within* the limits of the manor or liberty of the owner; yet it is held, that if, after having been started upon a person's own grounds, it be pursued and killed on those of another, it will nevertheless be his own property; because the possession which he gained, by finding it within his *own liberty*, is *continued* by the *immediate* pursuit. 11 *Mod. Rep.* 75. But if he start it on *another man's ground*, and kill it there, it will belong to him on whose ground it was killed, because the property arises *ratione soli*. *Lord Raym.* 251.

Further, if having been started in a person's ground (not being his own) it be killed in that of a *third person*, it will belong neither to him on whose ground it was started, nor to him on whose ground it was killed, but will, in such case, belong to the person

who killed it, though, as we have formerly intimated, he will be guilty of a trespass on the grounds of both the other persons. *Ibid.*

But if a stranger start game in the *chase* or *free-warren* (a) of one man, and hunt it into the liberty of another, the property will continue in the owner of the chase or warren, and the keeper may pursue and retake them, the property not being altered by being driven out of the liberty (unless it be out of the pursuit of the officers); for whilst the keeper pursues it, it does not in law pass into a new liberty, but still continues to belong to the chase or warren, which is a place of privilege and public establishment. *Bac. Abr.* 613. 2 *Leon.* 291.

(a) A *chase* is a privileged place for the keeping of beasts of chase or royal game, with exclusive power of hunting therein.— 2 *Blac. Com.* 38.

A free-warren is a franchise granted by the king for the custody of beasts and fowls of warren, viz. hares, rabbits, partridges, and pheasants; but this franchise is now little known, the name being retained principally in grounds set apart for breeding hares and rabbits. *Ibid.*

CHAP. III.

Of destroying Game at improper Seasons of the Year.

FOR the general preservation and protection of game, it is provided by 9 Anne, c. 25. s. 4. that if any person whatsoever shall, by *hays, tunnels, or other nets*, drive and take away any *wild duck, teal, widgeon, or other water-fowl*, in any fens, lakes, broad waters, or other places of resort for wild fowl, in the *moulting seasons* (viz. by 10 Geo. 2. c. 32. between the *first of June and the first of October*), such persons, being thereof convicted before a justice, shall forfeit 5s. and the *hays, nets, or tunnels*, used in driving or taking such fowl, shall be destroyed.

And by 2 Geo. 3. c. 19. s. 1. and 39 Geo. 3. c. 34. it is enacted, that no person shall, upon any pretence whatever, *take, kill, destroy, carry, sell, buy, or have in his possession*, any *partridge*, between the *first day of February and the first day of September*; or any *pheasant*, between the *first day of February and the first day of October*, unless such *pheasant* be taken in the proper season, and be kept in a mew or breeding place; and it is further provided, that any person offending against this act shall forfeit 5l. for every partridge or pheasant so taken, &c. to be paid to the informer with full costs of suit.

9 Anne, c. 25. Destroying water fowl between the 1st of June and the 1st of October.

Partridges between 1st of Feb. and 1st of Sept.
Pheasants between the 1st of Feb. and the 1st of October.

13 Geo. 3. c. 55. And by 13 Geo. 3, c. 55. s. 2. no person shall *kill, destroy, carry, sell, buy, or have in his possession, heath fowl*, commonly called *black-game*, between the 10th day of *December* and the 20th day of *August*, nor any *grouse*, commonly called *red-game*, between the 10th day of *December* and the 12th day of *August*, nor any *bustard*, between the 1st day of *March* and the 1st day of *September*, in any year, upon pain of forfeiting, for the *first offence*, a sum not exceeding 20*l.* nor less than 10*l.* and for the *second and every subsequent offence*, a sum not exceeding 30*l.* nor less than 20*l.* one moiety thereof to go to the informer, and the other moiety to the poor of the parish; and in case the penalty be not paid, and there be no distress to be had, the offender may be committed to prison, to be kept to hard labour for any time not exceeding 6 or less than 3 *months*.

And by the 43 Geo. 3. c. 112. Persons, taking or killing in the *New Forest* co. Southampton, any *heath fowl*, commonly called *black game*, between Dec. 10. and Sept. 1. shall be liable to the penalties of the 23 Geo. 3. c. 55.

Penalties for burning cover for black game and grouse.

And for the further preservation of black-game and grouse, it is enacted by 4 and 5 Will. and Mary, c. 22. s. 11. that no person shall, between the second day of *February* and the 24th day of *June*, burn any *gaig, link, heath, furze, goss, or fern*, on any mountains, hills, heaths, moors, forests, chases,

or other wastes, upon pain that the offender shall be committed to the house of correction for any time not exceeding one *month*, nor less than 10 *days*, there to be *whipped* and kept to hard labour.

The only species of game, the reader ~~Forest~~ perceives, the time for destroying of which ~~game.~~ is provided for by the *statute law*, is that of the *winged* tribe, but the *common law* has equally established periods for the pursuit of *pedestrian* animals, at least of such as are deemed game of the *forest*, which are the *hart*, *hind*, *buck*, *doe*, *boar*, *fox*, and *hare*; the seasons for hunting whereof respectively are as follow: viz. the *hart* and *buck*, from the feast of *St. John the Baptist* till *Holyrood-day*; the *hind* and *doe*, from *Holyrood-day* to *Candlemas*; the *boar*, from *Christmas* to *Candlemas*; the *fox*, from *Christmas* till *Lady-day*; and the *hare* from *Michaelmas* till *Candlemas*. See *Dyer Rep.* 169. 4 *Inst.* 316. It does not, however, appear, that any particular penalties are annexed to the non-observance of these periods, nor, indeed, do they seem to be very rigidly attended to in practice.

CHAP. IV.

Of destroying Game in the Night-time; on a Sunday; or on a Christmas-Day.

BY 23 Eliz. c. 10. s. 2. and 5. it is enacted, 26 Eliz. c. that no person, of whatever estate, 10. De-

stroying
Pheasants
and *Par-*
tridges in
the *night*.

9 Anne, c.
25. Hares,
Phea-
sants, Par-
tridges,
Moor-
game, and
Grouse.

Ibid from
12th Oct.
to 12th
Feb. & *e*
converso.

degree, or condition (*a*), shall take or de-
stroy any *pheasants* or *partridges* in the
night-time, upon pain of forfeiting 20s. for
every pheasant, and 10s. for every partridge.

And by 9 Anne, c. 25. s. 3. if any per-
son whatsoever shall take or kill any *hare*,
pheasant, *partridge*, *moor-game*, *heath-game*,
or *grouse*, in the *night-time*, he shall, on
conviction before a justice, forfeit the sum
of 5l. one half to go to the informer, and
one half to the poor of the parish, to be le-
vied by distress, or, for want of distress, be
sent to the house of correction for 3 *months*
for the *first offence*, and 4 *months* for every
after offence.—These penalties, however,
being thought insufficient, by 13 Geo. 3.
c. 80. s. 1. it is further provided, that if
any person shall kill, take, or destroy, any
hare, *pheasant*, *partridge*, *moor-game*, or
heath-game, or use any dog, gun, snare, net,
or other engine, with an intent to take, kill,
or destroy the same in the *night-time*, viz.
between 7 o'clock at night and 6 in the

(*a*) Though the words in the acts, against
destroying game in the *night-time*, are suf-
ficiently general to include all descriptions
of persons, we will not, for the honour of
sportsmen, suppose that the legislature
could have had in view, or that the act itself
will at any time affect, any other description
of persons than those who are ignominiously
branded with the appellation of *poachers*.

morning, from the 12th of *October* to the 12th of *February*, and between 9 o'clock at night and 4 in the morning, from the 12th of *February* to the 12th of *October*, such person, being thereof convicted upon the oath of one witness, before one justice, shall forfeit, for the first offence, a sum not exceeding 20l. nor less than 10l. and for the second, a sum not exceeding 30l. nor less than 20l. one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish.

And by 4 and 5 Will. and Mary, c. 23. 4 and 5 Will. and Mary, c. 23. Lords of manors may resist offenders. all lords of manors, or any persons authorized by them as gamekeepers, may, within their royalties, resist such offenders in the night-time, and shall suffer no punishment on that account.

And by the aforesaid act of 13 Geo. 3. c. 80. s. 6. it is also enacted, that if any person shall, upon a *Sunday*, or on *Christmas-day*, in the *day-time*, take, kill, or destroy any *hare*, *pheasant*, *partridge*, *heath-game*, or *moor-game*, or shall, upon a *Sunday* or *Christmas-day*, use any *dog*, *gun*, *net*, or *other engine*, for the taking, killing, or destroying thereof, such person, being convicted, shall be subject to the like penalties as by the said act are inflicted for taking or destroying game in the *night-time*.

And by 39 and 40 Geo. 3. c. 56. it is enacted, that if any persons, to the number of two or more, shall, after the passing of this act, enter into or be found in any fo- 40 Geo. 3. c. 50. Entering grounds in the night-time.

rest, chase, park, wood, plantation, paddock, field, meadow, or other open or enclosed ground, in the night, that is to say, between the hours of 8 of the clock at night and 6 in the morning, from the 1st day of *October* to the 1st day of *February*, or between the hours of 10 at night and 4 in the morning, from the 1st day of *February* to the 1st day of *October* in each year, having any *gun, net, engine*, or other *instrument*, for the purpose and with the intent to destroy, take, or kill, any *hare, pheasant, partridge, heath-fowl*, commonly called *black game*, or *grouse*, commonly called *red game*, or any other *game*; or, if any person or persons shall be found with any *gun, fire-arms, bludgeon*, or with any other *offensive weapon*, protecting, aiding, or assisting any such person as aforesaid; it shall and may be lawful for the ranger and occupier of any such forest, chase, park, wood, plantation, paddock, field, meadow, or other open or enclosed ground, and also for his, her, or their keeper and servants, and also for any other person or persons, to seize and apprehend, or to assist in seizing and apprehending, such offender or offenders, by virtue of this act, and to convey and deliver him into the custody of a peace-officer, who is to convey such offender before some justice of the peace; or, in case he shall not be so apprehended, any justice, on information before him, on the oath of any credible witness, to issue his warrant for the apprehen-

sion of such offender; and if, upon his apprehension, it shall appear to such justice, on the oath of any credible witness, that the person so charged has been guilty of the said offences, every such person shall be deemed a rogue and a vagabond, within the meaning of an act of the seventeenth of George the Second, c. 5. entitled *An Act to amend and make more effectual the Laws relating to Rogues and Vagabonds, and other idle and disorderly Persons, and to Houses of Correction*, and shall suffer such punishments as are directed to be inflicted on rogues and vagabonds.

CHAP. V.

Of tracing Hares in the Snow, and of taking them in Gins or Snares (a).

WE intend not to insult the generous sportsman, by warning him against offences which he would be ashamed to commit; far be it from us to suspect him of practices so unsportsmanlike and unmannerly, as to avail himself of the inclemency of the season, or the wiles of stratagem, to catch a defenceless prey by surprise; it is to

(a) The other statutes concerning hares will be found in Chap. I. III. IV. and VII. according to their respective imports. See *Index*.

arm him against the mercenary *poacher* that we enumerate the penalties noted in this and the preceding chapter; penalties, which we are persuaded, no one of our readers (however averse to the general spirit of the game laws) would desire to be repealed.

14 and 15 Hen. 8. c. 10. it is enacted, that no person, of whatever estate, degree, or condition they may be, shall *trace and kill any hare in the snow*, on penalty of 6s. 8d. for each hare.

1. Jac. 1. c. 27. *ibid.* And by 1. Jac. 1. c. 27. whoever shall *trace or course* any hares, in the snow, shall, on conviction before two justices, by confession, or oath of *two* witnesses, be committed to gaol for 3 *months*, unless he pay to the churchwardens, for the use of the poor, the sum of 20s. for every hare he shall so take or destroy; or shall, within one month after his commitment, become bound with two sureties in 20l. a-piece, before two justices, not to offend in like manner.

Of taking them in gins, &c. It is also by the same act provided, that every person, who shall at any time take or destroy any hares with *hare-pipes, cords, or with any such instruments, or other engines*, shall, on conviction before two justices, by confession or oath of two witnesses, suffer the like penalties.

22 and 23 Car. 2. c. 25. *Setting snares.* And by 22 and 23 Car. 2. c. 25. s. 6. if any person be found setting or using any snares, hare-pipes, or other like engine, and shall be thereof convicted, by confession, or oath of *one witness*, before *one justice*,

within a month after the offence committed, he shall give to the party injured such satisfaction as the justice shall appoint, and pay down immediately to the overseers, for the use of the poor, a sum not exceeding 10s. or else shall be committed to the house of correction for a time not exceeding one month.

CHAP. VI.

Concerning the Destroying of the Eggs of winged Game.

IN order to prevent the diminution of the *feathered game*, it is necessary to prohibit the destruction of their eggs; therefore, by 25 Hen. 8. c. 11. it is enacted, that no person, from the 1st day of *March* to the last day of *June* in every year, shall withdraw, take, destroy, or convey, any eggs of *wild fowl* from or in any nest where they shall be laid, upon pain of imprisonment for one year; and of forfeiting, for every egg of any *crane* or *bustard*, 20d. and for every egg of *bittour*, *heron*, or *shovelard*, 8d. and for every egg of *mallard*, *teal*, or other *wild fowl*, 1d. half to the king, and half to the informer.

And by 7. Jac. 1. c. 27. s. 2. any person, who shall take the eggs of any *pheasant* or *partridge* out of the nest, or *willingly break*, *spoil*, or *destroy* the same, in the nest, shall, on conviction before two justices, by con-

25 Hen. 8.
c. 11. De-
stroying
the eggs of
wild fowls,

1 Jac. 1.
c. 27.
Eggs of
pheasants
and par-
tridges.

fession, or oath of two witnesses, be committed to gaol for three months, unless he pay, on conviction, to the churchwardens, for the use of the poor, 20s. *for every egg*; or, within one month thereafter, become bound, with two sureties in 20l. each, not to offend again in the like manner.

CHAP. VII.

Of buying and selling Game.

IF game were permitted publicly to be bought and sold, the statutes made for their preservation would be nugatory: no penalties would be sufficient to check the rapacity either of indigence or avarice.

1 Jac. 1. c. 27. Pen- It is therefore enacted, by 1 Jac. 1. c. 27. s. 4. that if any person shall sell, or buy to sell again (*a*), any deer, hare, partridge, or selling

deer, hare, partridge, or pheasant.

(*a*) It seems, therefore, no offence under *this* act merely to *buy* game without an intention of *selling* it again; but we are to remember, that by 9 Anne, c. 25. it is penal for an unqualified person to *have game in his possession*.

But, in the case of *Warnesford v. Kendall*, 10 East, 19. it was decided, that the taking of game up, after it had been killed, in order to carry it to the lord, is not a *possession* within the penalty of the Game Laws.

pheasant (except *partridges* and *pheasants* reared up by hand, or brought from abroad), he shall, on conviction at the assizes, quarter-sessions, or before two justices, forfeit 40s. for every *deer*, 10s. for every *hare*, 10s. for every *partridge*, and 20s. for every *pheasant*; one moiety to go to the informer, and the other to the poor of the parish. This act being found to be an insufficient provision against the traffic of selling game,

It was by 28 Geo. 2. c. 12. s. 1. moreover 28 Geo. 2. c. 12. Further penalties. provided, that if *any* person, whether qualified or not qualified to kill game, shall sell, expose, or offer to sell any *hare*, *pheasant*, *partridge*, *moor*, *heath-game*, or *grouse*, every such person shall, for every such offence, be liable to the same penalties as by the act of 5 Anne (next hereafter mentioned) are inflicted upon higgler, chapmen, &c. for buying or selling game. And as it was found difficult to detect persons *actually selling* game, in order the more effectually to put a stop to this practice, it was further provided, that,

If any of the aforesaid game shall be Persons found in the *shop*, *house*, or *possession*, of having any *poulterer*, *salesman*, *fishmonger*, *cook*, or game in *pastry-cook*, (or by 9 Anne, c. 25. s. 3. of any possession. *other person* not qualified in his own right, or entitled under some person so qualified) *the same shall be deemed an exposing thereof to sale.*

And by 5 Anne, c. 14. s. 2. if any *higgler*, Penalty against *chapman*, *carrier*, *inn-keeper*, *victualler*, or higgler, &c.

alehouse-keeper, shall have in his custody any *hare*, *pheasant*, *partridge*, *moor*, *heath-game*, or *grouse*, (unless in the case of a carrier they be sent up by persons qualified to kill game) or shall *buy*, *sell*, or *offer to sell*, any such *hare*, *pheasant*, &c. on conviction, by the oath of *one* witness, he shall forfeit, for every *hare*, *pheasant*, &c. the sum of 5*l*. one half to be paid to the informer, and the other half to the poor of the parish, to be levied by distress; and for want of distress, the offender shall be committed to the house of correction for three months for the first offence, and four months for every other offence.

Justices
and lords
of manors
may take
game from
persons
not qua-
lified.

And by s. 4. of the same statute, any justice of peace and lord of a manor (within the same manor) may take to his own use any such *hare*, &c. or any other game which shall be found in the custody or possession of any such higgler, or other person not qualified to kill game.

Informers
are ex-
empt
from the
penalties.

And by the same act, s. 3. if any person, buying or selling of game against the said act, shall inform against any person under the same, so as that he be convicted, such informer shall be discharged of the afore-said penalties, and shall receive the same benefit as any other informer.

CHAP. VIII.

Concerning the Appointment, Office, and Authority of a Gamekeeper.

THE first statute we meet with authorizing the appointment of gamekeepers is 22 and 23 Car. 2. c. 25. s. 2. By this act, lords of manors, or of other royalties, not under the degree of an esquire, may, by writing, under their hands and seals, appoint *gamekeepers* within their own manors or royalties (*a*), who shall be authorized to take and seize all *guns, bows, greyhounds, setting-dogs, lurchers, or other dogs, to kill hares or conies; ferrets, trammels, lowbells, hays, or other nets, hare-pipes, snares, or other engines* (*b*), for the taking and killing of *conies, hares, pheasants, partridges, or other game*, which shall be used within the precincts of such manors by any persons by that act prohibited (*c*) to keep or use the same. This statute merely authorizes gamekeepers to use certain means tending to the

(*a*) See the form of a gamekeeper's deputation at the end of this chapter.

(*b*) It is observable here, that gamekeepers are not authorized to seize *game* itself, but only instruments for its destruction,

(*c*) See Chap. I.

preservation of the game, without empowering them to *kill* it. But,

5 Anne, c. 14. May empower them to kill game. Gamekeepers shall not sell game.

By 5 Anne, c. 14. s. 4. all lords and ladies of a manor are authorized, by writing, under their hands and seals, to empower such gamekeepers to kill, within the said manor (a), any hare, pheasant, partridge, or other game. If, however, such gamekeeper shall sell or dispose of the game he shall so kill, without the knowledge or consent of the said lord or lady (b), and shall be thereof convicted, on complaint of such lord or lady, and the oath of *one* witness, before a justice of peace, he shall be committed to the house of correction, and kept to hard labour for the space of three months.

9 Anne, c. 25. No person shall appoint more than one gamekeeper for one manor.

By a clause in the last act, lords of manors might appoint an *indefinite number* of gamekeepers: but this being found more conducive to the destruction than the preservation of game, it is provided by 9 Anne, c. 25. that no lord or lady of any manor shall appoint more than one gamekeeper within one manor, with power to kill game. And further that the name of the person

(a) Gamekeepers, therefore, are liable to the same *penalties* as unqualified persons, if they kill game *out of their proper manors*; but it has been held, that their guns and dogs cannot be taken from them as they may from other persons. 2 *Wils. Rep.* 387.

(b) Nor *with* their consent. See *ante*, Chap. VII. page 44 (28 Geo. 2. c. 12).

so appointed shall be entered with the clerk of the peace of the county, and a certificate thereof be granted by the said clerk on payment of one shilling for the same (a); and in case any gamekeeper, whose name shall not be so entered with the clerk of the peace (unless such gamekeeper be otherwise qualified to kill game (b) shall kill any *hare, pheasant, partridge, moor, heath-game, or grouse*, he shall, on conviction, by the oath of one witness, before a justice, forfeit, for every such offence, the sum of 5l. one half thereof to be paid to the person informing, and the other half to the poor of the parish, to be levied by distress; and in case there be no distress, the offender to be sent to the house of correction for three months for the first offence, and four months for every other offence.

Game-keepers killing game without certificate.

And it is by 48 Geo. 3. c. 93. s. 2. Lords of manors (which repeals the 3 George 1. c. 11.) may appoint game-keepers, or lady of any manor, to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, with authority to

(a) See *ante*, Chap. II. page 25.

(b) If, therefore, a gamekeeper be qualified in his own right to kill game, he need not enter his deputation.

such person, as gamekeeper, to kill game within the same for his own use, or for the use of any other person or persons whatever, to be specified in such appointment or deputation, whether qualified or not; and no person so appointed gamekeeper as aforesaid, and empowered to kill game for his own use, or for the use of any other person so specified, as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for, as the gamekeeper or male servant of the lord or lady making such appointment, or giving such deputation as aforesaid; any thing in any act or acts of Parliament to the contrary notwithstanding.

48 Geo. 3.
c. 93.
Game-keepers so appointed to have the same rights as if qualified.

And by sect. 3. of the same act it is enacted, that any person appointed gamekeeper, under the authority of this act, to kill game for his own use, or the use of any other person, shall have the same rights, privileges, power, and authority, as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws in force immediately before the passing of this act.

25 Geo. 3.
c. 5. Deputation must be registered.

And by 25 Geo. 3. c. 5. s. 2. every deputation of a gamekeeper, granted to any person by any lord or lady of any manor in England or Wales, shall be registered with the clerk of the peace of the county in which the said manor lies. And if he neglect to have the

same registered, and to take out a certificate of such registry, he shall forfeit the sum of 20l.—[Gamekeepers to any of the royal family are excepted out of this act.]

On the appointment of a new gamekeeper, a *new* certificate must be taken out, and the persons acting under the *old* certificates shall be liable to the penalties of this act.

We have here subjoined the form of a gamekeeper's deputation or appointment(a).

“ Know all men by these presents, that I
 “ *Gamaliel Wilson*, of *Melbourne*, in the
 “ county of *Cambridge*, Esq. lord of the
 “ manor of *Orwell*, in the same county, have
 “ nominated, deputed, authorized, and ap-
 “ pointed, and by these presents do nomi-
 “ nate, depute, authorize, and appoint, *Jo-*
 “ *seph Snell*, of *Basingbourn*, yeoman, to be
 “ gamekeeper of and within my said manor
 “ of *Orwell*, with full power, licence, and
 “ authority, to pursue, take, and kill, any
 “ hare, pheasant, partridge, or other game
 “ whatsoever, in and upon my said manor
 “ of *Orwell*, for my sole and immediate use
 “ and benefit; and also to take and seize
 “ all such guns, bows, greyhounds, setting-
 “ dogs, lurchers, or other dogs; ferrets,
 “ trammels, lowbells, hays, or other nets,
 “ hare pipes, snares, or other engines, for
 “ the pursuing, taking, or killing of hares,
 “ rabbits, pheasants, partridges, or other

(a) This must be written on a deed stamp.

GAME LAWS.

“ game, as shall be used within the precincts of my said manor, by any person or persons who by law are prohibited to keep or use the same. In witness whereof I have hereunto set my hand and seal, this 2d day of June, 1405.

“ *GAM. WILSON.*” (Seal)

Sealed and delivered in the presence of
Peter Simpson, Melbourne, aforesaid.

CHAP. II.

The Law relating to Deer.

IN the first impression of this treatise the head **DEER** was omitted, as being a species of game with which the ordinary sportsman has little to do; but it having been since suggested, that an outline of the existing laws, relative to those animals, might be deemed acceptable to gentlemen resident near the royal forests of the kingdom, such outline is here inserted.

28 Geo. 2.
c. 19. Destroying
of cover
for deer.

For the general preservation of the deer in forests and chases, it is enacted, by 28 Geo. 2. c. 19. that if any person shall unlawfully set fire to, burn, or destroy, or assist in so doing, any goss, furze, or fern, upon any forest or chase within England, he shall, on confession, or conviction by the oath of one witness before a justice, forfeit a sum not exceeding 5l. nor less than 40s. one moiety thereof to go to the informer, and the other

to the poor of the parish; the same to be levied by distress; and, if no distress, the offender shall be committed to the county gaol, for a time not greater than three months, nor less than one.

And by the *Waltham Black Act* (a) (9 Geo. 1. c. 22.) if any person, being armed and disguised, shall appear in any forest, chase, park, paddock, or inclosed grounds, where deer are or have been usually kept, or shall wilfully hunt, kill, or steal, any *red or fallow deer*, he shall be guilty of felony, without benefit of clergy. 1. c. 22. Frequenting forests in disguise.

And by 16 Geo. 3. c. 30. if any person shall course or hunt, or take in any slip, noose, toyle, or snare, or shall kill, wound, or destroy, or attempt so to do, or shall carry away any red or fallow deer in any forest, &c. whether enclosed or not, or assist in such offence, he shall for the first offence forfeit 20l. and shall moreover forfeit 30l. for every deer so wounded, killed, taken, or carried away; and if the said offender have been entrusted with the custody of such deer, he shall forfeit double the above penalties; and for the second offence be guilty of felony, and transported for seven years. 16 Geo. 3. c. 30. Taking and destroying deer.

(a) This statute is usually so called from its having been made in consequence of depredations committed in Epping Forest, near *Waltham*, by persons with their *faces blacked*.

Warrant to search for deer.

And, by the same act, a justice is empowered to grant a warrant to search for deer stolen, and engines concealed; and the person discovered to be unlawfully possessing the same shall forfeit a sum not greater than 30l. nor less than 10l.

Using engines for the destruction of deer.

And if any person shall set, lay, or use any net, wire, slip, noose, toyle, or other engine, for taking or killing deer within any forest, chase, purlieu, or ancient walk, or within the ring or outer fence, dividing the same from the adjoining lands, or in any enclosed park, wood, or ground, where deer are accustomed to be, he shall forfeit, for the first offence, a sum not exceeding 10l. nor less than 5l.; and, for every subsequent offence, a sum not exceeding 20l. nor less than 10l.

Destroying fences in which deer are kept.

Further, if any person shall wilfully pull down or destroy, or cause to be pulled down or destroyed, the paling or wall of any forest or ground where any red or fallow deer shall be kept, he shall be subject to the like penalty of 20s. as for the first offence for killing deer.

Ranger may seize guns, &c. of offenders.

And, as a further preventive against the destruction of deer, the ranger or keeper of forests, or other places where deer are kept, is empowered to take from persons trespassing thereupon, all guns, fire-arms, slips, nooses, toyles, snares, engines, and dogs, in like manner as we have before seen that gamekeepers are empowered to take dogs, nets, and other engines, from persons not

duly qualified to carry or use the same, and also to detain, and take before a justice, the person having the same; and if any person shall hurt or wound the ranger or keeper, or his assistants, in the exercise of such authority, or attempt to rescue any offender in his custody, he shall be guilty of felony, and transported for seven years.

If a person has a licence to hunt deer or other animals in a forest, chase, or enclosed park, he must be careful that he do not exceed the liberty expressly granted him; for, if he do, it has been held, that he shall be considered as a trespasser *ab initio*, as if no licence had been granted him, and be punishable accordingly. *Manw.* 280. Licence to hunt deer.

Every lord of Parliament, however, without any express licence, has the privilege, by the common law of the realm, to kill a deer or two in the king's forest, as often as he shall have occasion to pass through the same, either in going to or returning from any summons from his Majesty, so that the forester be present, or a horn be sounded by the peer, or his servants, to give notice that he is going to exercise his right, (4 *Inst.* 308.)—A right, however, which it is believed is now seldom or never exerted. Privilege of peers in respect of royal deer.

§ 1. By 42 *Geo.* 3, c. 107. That if any person or persons shall wilfully course or hunt, or take in any slip, noose, toyle, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away any red or fall- 42 *Geo.* 3, c. 107. Persons who shall hunt, or take, or shoot, &c.

deer in any enclosed ground, shall be transported for seven years.

low deer, kept or being in the enclosed part of any forest, chase, purlieu, or ancient walk, or any enclosed park, paddock, wood, or other enclosed ground wherein deer are, have been, or shall be, usually kept, without the consent of the owner of such deer, or without being otherwise duly authorized, or shall knowingly be aiding, abetting, or assisting, therein or thereunto, every person so wilfully offending, in any of the cases abovementioned, shall be deemed to be guilty of felony, and, being convicted thereof upon indictment, shall be transported for the term of seven years.

Persons committing such offences shall forfeit 50l. Persons entrusted with the deer, shall forfeit double the penalty. Provisions of 16 Geo. 3. c. 30. extended to this act.

§ 2. That if any person shall so offend as aforesaid, he shall, for every such offence, forfeit the sum of fifty pounds; and if the offender, in any of the cases aforesaid, shall be a keeper of, or a person entrusted with, the care of deer in the forest, &c, wherein the offence shall be committed, he shall, for every such offence, forfeit and pay double such penalty.

§ 3. That all powers and provisions, contained in 16 Geo. 3. c. 30. (see *ante*, p. 53.) concerning the apprehending and conviction of persons offending against the said act, and the recovery and disposal of the penalties therein mentioned, and the manner of appealing from convictions, and of bringing actions or prosecutions for any thing done under the said act, and proceedings and costs in such actions, shall, so far as the same respectively are applicable, be

applied for all other purposes to which such powers and provisions are applicable under this act: provided that, in cases of non-payment of any such penalty, with the charges of conviction, and for want of sufficient distress, the offender shall be sent to the common gaol, for six months, unless the penalty and charges be sooner paid.

In default of payment of penalties offenders may be committed for six months.

§ 4. Enacts that persons convicted on a second offence, for which a pecuniary penalty is imposed, shall be adjudged to be transported for seven years.

§ 5 Enacts that, to the intent that the prosecution of persons who shall offend a second time may be carried on with as little expense and trouble as may be, that the justice before whom any persons shall be convicted, for the first time, in a pecuniary penalty or forfeiture, shall transmit such conviction, under his hand and seal, to the next quarter sessions, there to be filed; a true copy whereof shall be sufficient evidence to prove the conviction for such first offence.

Convictions of the first offence shall be transmitted to the quarter-sessions, there to be filed.

§ 6. Repeals so much of 16 Geo. 3. c. 30. as inflicts penalties, for committing any of the preceding offences.

§ 7. Provided, that nothing therein contained shall extend to *Scotland* and *Ireland*.

Not to extend to *Scotland* or *Ireland*.

CHAP. X.

The Law relating to Conies or Rabbits.

THOUGH rabbits are not, strictly speaking, *game*, yet (a) as they are included in many of the acts relating to the game, and are, in many places, a considerable object of sport amongst the *rustici*, we imagine it will be expected of us to add a chapter concerning those animals. We shall first notice the *common*, and then the *statute*, law relating to them.

Common
Law.

By the common laws, if rabbits come upon a man's ground, from a warren or elsewhere, and damage his corn or herbage, it is lawful for him to kill them; but he is not justified in killing them for feeding upon a common to which he may be entitled to commonage; for rabbits, being *beasts of warren* and profitable, the owner of the soil has a right to keep them there, and the commoner has no further interest in the common than for the feed of his cattle; and as a *commoner* cannot kill them, much less can a *stranger*. *Cro. Eliz.* 876. Neither may he destroy or stop up the burrows: if, therefore, they be so numerous as to leave insufficient pasture for the commoner's cattle, his remedy will be to bring an action against the lord for surcharging the common. 1 *Bur.* 259.

(a) See chap. II. page 25.

As to the *statute* law relating to these animals, by 3 Jac. 1. c. 13. it is provided, that if any person shall, by *night* or by *day*, unlawfully enter into any park or ground *enclosed* (a) with a *wall*, *pale*, or *hedge*, and used for the keeping of conies, and unlawfully hunt, take, chase, or slay, any conies, within such park or ground, against the will of the owners, and shall be thereof convicted at the suit of the king or the party, at the assizes or sessions, he shall suffer *three months* imprisonment, pay *treble damages* and costs to the party, to be assessed by the justices before whom he shall be convicted, and shall find sureties for his good demeanour for seven years, or remain in prison till he does.

Statute Law.

Hunting rabbits in enclosed warrens.

And by 22 and 23 Car. 2. c. 25. s. 4. if any person shall, at any time, wrongfully enter into any warren or ground lawfully used for breeding or keeping of conies, *though the same be not enclosed*, and shall chase, take, or kill, any conies against the will of the owner or occupier, not having lawful title so to do, and shall be thereof convicted within one month after such offence, by confession, or oath of one witness, before one justice, he shall yield to the party grieved *treble damages* and costs; and suffer three months imprisonment, and so long after till he finds sureties for his good behaviour.

Hunting in warrens not enclosed.

(a) This act shall not extend to any grounds enclosed *since* the making thereof and without the king's licence, s. 7.

In the
night
time.

And by 5 Geo. 3. c. 14. it is enacted, that if any person shall so enter into such warren or grounds, in the *night time*, and *take or kill* any coney against the will of the owner or occupier of the said ground, or shall be *aiding or assisting* therein, and be thereof convicted at the *assizes*, he shall be *transported for seven years*, or suffer some other lesser punishment by *whipping, fine, or imprisonment*, as the court shall award.

Persons in
warrens
disguised.

And by 9 Geo. 1. c. 22. if any person, being *armed and disguised*, shall appear in any warren or *place* where hares or *conies* are usually kept, or unlawfully rob any such warren, or shall (*though not armed and disguised*) rescue any person in custody for such offence, or procure any person to join him therein, he shall be guilty of *felony without benefit of clergy*.

Penalty
against
killing
rabbits in
the night
upon bor-
ders of
warrens.

And by the said statute, 22 and 23 Car. 2. it is provided that no person shall kill or take in the *night* any conies *upon the borders of warrens*, or other grounds lawfully used for the breeding or keeping of conies, except such person be owner of the soil, or lawful possessor of the ground *whereupon* such conies shall be killed, or be by him employed, upon pain of such satisfaction as the justices aforesaid shall award, and also pay to the overseers, for the poor, a sum not exceeding 10s. or in default thereof, be committed to the house of correction, for a term not exceeding one month.

Snaring
rabbits.

And by same act, if any person shall be

found setting or using any *snares*, or *other like engine*, for the taking of *conies*, and shall be thereof convicted, he shall be liable to the same penalties as in the last-mentioned section.

And by the same statute of 3 Jac. 1. be- *Inferior* fore noticed, it is further enacted, that, if *persons* any person, not having hereditaments of *keeping* the yearly value of 40l. or not worth in *dogs, &c.* goods the sum of 200l. shall *use* any *gun* or *rabbits.* *cross-bow* to kill *conies*, or shall *keep* any *engine, hays, nets, ferrets, or coney-dogs*, (except he have enclosed rabbit-grounds the increase of which is worth 40s. a-year to be let) any other person having hereditaments in fee, in tail, or for life, of the yearly value of 100l. in his own right, or in right of his wife, may lawfully take from such offender all such engines or dogs, and keep the same to his own use.

CHAP. XI.

The Law relating to Hawks and Hawking.

THOUGH the diversion of hawking, since the invention of gunpowder, and the improvement of fire-arms, has become less prevalent than formerly, yet as it is still considered in some places as a pleasing and fashionable amusement, we shall just no-

tice the subsisting laws upon that subject. These, we believe, are entirely comprised in the few following statutes, relative chiefly to the preservation of the hawk species; and first,

4 Ed. 3.
c. 22.

By 34 Ed. 3. c. 22. persons, finding any species of hawk that is lost, shall presently bring the same to the sheriff, to be proclaimed as therein directed, for the benefit of the owner.

And by 37 Ed. 3. c. 19. if any person steal a hawk, he shall be dealt as with him who had stolen a horse (*the punishment for which offence was then clergyable felony*).

Further, by 11. Hen. 7. c. 17. persons are forbidden to bear any hawk of the breed of England, called nyesse, goshawk, passel, laner, loneret, or falcon; or to disturb them in their coverts, or slay them for any mischief they may have done, upon pain of 10l.

By the same statute (confirmed and extended by 5 Eliz. c. 21.), persons, of whatever degree, are commanded not to take, either in their own or other person's grounds, the eggs of any falcon, goshawk, or laner, out of their nests, under pain of fine and imprisonment.

And, lastly, by 23 Eliz. c. 10. no person shall hawk, or with his spaniels hunt, amongst any corn that shall be coddled or eared, nor before the same shall be shocked, cocked, hilled, or cropped, on pain of forfeiture, for every offence, the sum of 40s. to the owner of such corn.

CHAP. XII.

The Law relating to Pigeons.

THE law relating to pigeons is introduced here, because, from its being a bird which frequently presents itself to the sportsman whilst in pursuit of superior game, it too often is made a sacrifice to his wantonness or his despair. This circumstance, with other depredations committed upon those animals, occasioned it to be enacted by 1 Jac. 1. c. 27. that if any person shall *shoot at, kill, or destroy, any house-dove or pigeon, with any gun or bow, or shall take, kill, or destroy the same with setting dogs and nets, or with any other instruments whatever, he shall, on conviction, before two justices, by confession, or the oath of two witnesses, be committed to gaol for three months, or pay to the church-wardens of the parish, for the use of the poor, 20s. for each pigeon, or within one month after commitment, become bound with two sureties, in 20l. a-piece, not to offend again.*

1 Jac. 1.
c. 27.
Shooting
at or
otherwise
destroy-
ing pi-
geons.

The above act, however, not being found to be effectual for the prevention of the offence described,

It is further provided, by 2 Geo. 2. c. 29. that if any person shall shoot at, with an intent to kill, or shall, by any means whatever, kill or take, with a wilful intent to destroy, any house-dove or pigeon, and shall

be thereof convicted, by confession, or the oath of *one* witness, before *one* justice, he shall forfeit 20s. *to the person prosecuting*; and if not forthwith paid, may be committed to the common gaol or house of correction, and kept to hard labour for a term not exceeding three calendar months, nor less than one.

It is however declared, that the same person shall not be convicted under both the preceding acts for the same offence, and that the prosecution shall be commenced within two months after the offence shall have been committed.

But, notwithstanding the provisions of the above acts, it has been determined, that the owner of land may kill such pigeons as he shall find thereon devastating his corn, *Cro. Jac.* 492. as the public good requires, that the grain of the kingdom should be preserved.

CHAP. XIII.

Laws relating to the Preservation of Fish.

THOUGH fish do not properly come under the denomination of *game*, yet, as they are included in some of the statutes relating to the game, and as they moreover form a part of the diversion of country gentlemen, we presume it will not be unaccept-

able to many of our readers, to know the existing laws concerning their preservation.

The first act it is material to notice under this head, is 3 Ed. 1. c. 20. by which it is enacted generally, that if any person be attainted at the suit of the party, of trespassing in any ponds, large amends shall be awarded; the offender shall suffer three years imprisonment, be fined at the discretion of the court, and find sureties not to offend again; and if he have not wherewith to make fine, after three years imprisonment, he shall find like surety, or abjure the realm.

And by 5 Eliz. c. 21. s. 2. it is provided, that if any person shall unlawfully break out or destroy any *head or dam of a fish-pond*, or shall wrongfully fish thereon with intent to take or kill fish, he shall, on conviction, at the assizes or sessions, at the suit of the king, or of the party injured, be imprisoned three months, and pay treble damages; and after the expiration of the said three months, shall find sureties for good behaviour for seven years to come. See 9 Geo. 1. c. 22. *post*.

And by 31 Hen. 8. c. 2. s. 2. if any *evil-disposed person* shall fish in the day-time, from six o'clock in the morning, till six in the evening, in any ponds, stews, or moats, with nets, hooks, or bait, against the will of the owners, they shall, on conviction thereof, at the suit of the king, or the party grieved, suffer imprisonment for the space of three months, and find security for their good behaviour,

22 and 23
Car. 2. c.
25. Pen-
alties
against
fishing in
general.

And by 22 and 23 Car. 2. c. 25. s. 7. after reciting, that divers idle and mean persons were used to betake themselves to the stealing and taking of fish out of ponds and rivers, it is enacted, that if *any person* shall, at *any time*, use any *casting-net, drag-net, shove-net, or other net whatever*, or any *angle, hair, noose, troll, or spear*, or shall *lay any wears, pots, nets, fish-hooks, or other engines*, or shall *take any fish, by any means whatever*, in any river, stew, pond, moat, or other water, or *shall be aiding* thereunto, without the consent of the owner of the water, and be convicted thereof before a justice, by confession, or the oath of *one* witness, within *one month* after the offence committed, such offender shall give to the party injured such satisfaction as the justice shall appoint, not exceeding treble damages; and shall over and above pay down *presently*, unto the overseers of the poor, such sum, not exceeding 40s. as the justice shall think fit; and in default of payment, the said penalties to be levied by distress, and for want thereof, the offender to be committed to the house of correction, for a term not exceeding one month, unless the party offending enter into bond with surety to the party injured, in a sum not exceeding 10l. never to offend in like manner.

Justices
may de-
stroy nets,
angles,
&c.

And the justice is authorized to take, cut in pieces, and destroy, all such angles, spears, hairs, nooses, trolls, wears, pots, fish-hooks, nets, or other engines, with which such offender shall be taken.

But though, by this act, a justice of the peace is authorized to cut in pieces and destroy nets, &c. of offenders, it appears, that the owner of the water or fishery cannot justify such a measure, but can only take them *damage feasant*. Cro. Car. 165. and statute 4 and 5 Will. and Mary, c. 23.

Persons aggrieved may appeal to the Appeal. quarter sessions, whose judgment shall be final.

And by 4 and 5 Will. and Mary, c. 23. 4 and 5 s. 5. and 6. it is enacted, that no person (except makers and sellers of nets, owners of a river or fishery, authorized fishermen, and their apprentices), shall keep any net, angle, leap, pike, or other engine, for taking of fish. Will. and Ma. c. 23. Penalties for keeping nets, &c.

And the owner of any river or fishery, or persons by them authorized, may seize and keep to his own use every net, angle, leap, pike, and other engine, which shall be found in the custody of any person fishing in any river or fishery, without the consent of the owner or occupier. Owners of rivers may seize nets, &c.

And such owner, or other person authorized by any justice, in the day-time, may search the houses or other places of any person by this act prohibited to keep the same, who shall be suspected to have such nets or other engines in his custody, and the same to seize and keep to their own use, or cut in pieces and destroy. And other persons by warrant of a justice.

And by 5 Geo. 3. c. 14. s. 1. it is enacted,

5 Geo. 3. c. 14. **Stealing fish out of parks, gardens, &c. or receiving the same.** that if any person shall enter into any *park or paddock* enclosed (*a*), or into any *garden, orchard, or yard*, belonging to or adjoining any dwelling-house, wherein shall be any *river, stream, pond, pool, moat, stew, or other water, and by any means whatsoever*, without the consent of the owner, shall steal, kill, or destroy any fish, *bred, kept, or preserved* therein, or shall be assisting therein, or shall receive or buy any such fish, knowing them to be such, such offenders being indicted within six months thereafter, and thereof convicted, shall be transported for seven years.

Impeachers pardoned. Persons making confession of such offence, and giving evidence against an accomplice, who in pursuance thereof shall be convicted, shall be pardoned.

Penalty against stealing fish out of other places. And by the same act, s. 3. it is enacted, that if any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish, in any *river, or stream, pool, pond, or other water* (not being in any park or paddock enclosed, or in any garden, orchard, or yard, belonging or adjoining to a dwelling-house, but in any other enclosed ground, being pri-

(*a*) The enclosing a piece of ground, and decorating it with plantations, is not sufficient to constitute it a legal park, which can be made only by a grant from the king, or immemorial usage. 2 Black. Com. 38.

vate property), such person, being thereof convicted, by confession, or the oath of one witness, before a justice, shall forfeit *five pounds* to the owner of the fishery, or such river, or other water, and in default thereof, shall be committed to the house of correction for a time not exceeding six months.

And by 9 Geo. 1. c. 22. if any person, *armed and disguised*, shall unlawfully steal *fish in disguise, felony.* or take away any fish out of any river or pond, or (whether armed and disguised or not) shall unlawfully and *maliciously* break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for any such offence, or procure any other to join him therein, he shall be guilty of *felony without benefit of clergy.*

CHAP. XIV.

Concerning the Mode of recovering the Penalties under the Game Laws.

UPON this subject we are to observe, that the penalties incurred by such acts, relating to the game, as have been made since the 8th of Geo. the 1st, are recoverable in the particular manner in such acts respectively prescribed: but by that statute, c. 19. it is further provided, that, in future, where

any person shall be liable to any pecuniary penalty, upon conviction before any justice of the peace, for any offence against any law, *then in being*, for the preservation of the game, it shall be lawful for the prosecutor of such offender to proceed to recover the said penalty, *either* by information before a justice, *or* to sue for the same in any of the courts of record at Westminster.

Provided that no offender shall be prosecuted for the same offence, *both* by the way prescribed by *that* law, and by the way prescribed by any of the *former laws*; and the offender can only be convicted in one penalty on the same day. 7 Term Rep. 152.

And by 2 Geo. 3. c. 19. he is permitted to sue, in the said courts, for the *whole of such penalty*, for his *own use*, either by action of debt or otherwise; and if he recover the same, shall have *double costs*, and no part of the said penalty recovered shall be paid to the *use of the poor*, as directed by former statutes.

Such action, however, must be brought within six lunar months after the offence committed.

By the 44 Geo. 3. c. 98. s. 10. no actions for penalties relating to the stamp duties shall, in future, be commenced, but in the name of the attorney-general in England, and advocate for Scotland, or some officer of the stamp duties.

CHAP. XV.

An Abstract of the Act of Parliament relative to the Stealing of Dogs, and other Laws relative to those animals.

WE think there needs no apology for inserting this useful and not irrelevant subject in a treatise on the Game Laws.

By 10 Geo. 3. c. 18. it is enacted, that if ^{10 Geo. 3.} any person shall steal *any dog or dogs of* ^{c. 18.} *any kind or sort whatsoever* from the owner ^{Stealing and de-} thereof, or from any person entrusted by the ^{taining} owner with such dog or dogs, or shall *sell,* ^{dogs.} *buy, receive, harbour, detain, or keep* any such dog or dogs, knowing the same to be stolen, every such offender, being thereof convicted, on the oath of *one* witness, or on his or her own confession, before *two* justices, shall, for the *first* offence, forfeit a sum not exceeding *thirty* nor less than *twenty* pounds, at the discretion of such two justices, together also with the charges previous to and attending such conviction, to be ascertained by the same justices.

And in case such penalty shall not be forthwith paid, such justices shall commit the offender to the common gaol or house of correction, for a time not exceeding twelve nor less than six calendar months, until the penalties and charges aforesaid shall be paid.

**Second of-
fence.**

And in case such offender shall be convicted of a second offence in manner aforesaid, he shall forfeit a sum not exceeding 50l. nor less than 30l. together also with the charges aforesaid.

And upon non-payment, such justices shall commit the offender to the common gaol or house of correction, for any time not exceeding eighteen nor less than twelve months, or until the same shall be paid. One moiety of which penalties shall be paid to the persons informing, and the other moiety to the poor of the parish where the offence shall have been committed.

And such justices shall also order the offender to be publicly whipped within three days after commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day-time (a).

**Justices
may grant
warrants
to search
for dogs
stolen.**

It is also further provided, that it shall be lawful for one justice, upon information made to him for that purpose, to grant a warrant to search for any dog or dogs stolen as aforesaid; and in case any such dog, or the

(a) If the above statute be perused with attention, it will be discovered to be worded with great inaccuracy; but it is not within the design of this little treatise to point out the legal quibbles that may probably arise upon it.

skin thereof shall be found, the said justice shall take and restore such dog or skin to its right owner, and the person, in whose custody or possession such dog or skin shall be so found (such person being privy to the said theft), shall be subject and liable to the like penalties and punishments as are inflicted on persons convicted of stealing any dog or dogs under this act.

But if any person shall think himself or Appeal. herself aggrieved by any thing done in pursuance of this act, he may appeal to the next general quarter-sessions, within four days after the cause or complaint shall arise, such appellant giving fourteen days notice in writing of his intention to appeal, and the justices, at such sessions, shall determine the appeal in a summary way, and award such costs as they shall think meet, which determination shall be *final*.

On the subject of dogs the following determinations have occurred:

It is a public nuisance to suffer any mis- Mischiev-chievous dog to go unloose or unmuzzled, to ous dogs. the danger or annoyance of the neighbours or passengers, and the owner thereof may be indicted, *Dy.* 25; and an action for damages will also in such case lie against the owner, 2 *Str.* 1264. But it seems that such action cannot be brought against the owner of a dog for biting a person, unless the owner had notice of his having bit somebody at least *once* before. 12 *Mod.* 555. 1 *Ld. Raym.* 606.

An action will also lie against a man for keeping a dog *accustomed* to bite sheep, provided it can be proved that the owner knew him to be guilty of such a practice; and it has been held, that his having killed and wounded sheep *once* before is sufficient proof of his being so accustomed. *Dy.* 236.

If another man's dog fall upon mine to worry him, I am justified in beating him, but not in killing him, unless there be danger of his materially injuring my dog, and I cannot save him in any other way. For the loss of a man's dog, which is the guard of his person, is a serious injury, and not to be effected without a real necessity. 3 *Salk.* 139.

And, for a reason similar to the last, if a dog go astray, and be detained by the finder, after he be demanded by the owner, an action will lie for the recovery of him, and the detainer liable to the damages and costs. *Cro. Eliz.* 125. *Black. Rep.* 1117.

CHAP. XVI.

Of committing Trespass in the Pursuit of Game.

IN the heat of pursuit after game, few sportsmen are so cautious as at all times to refrain from unlawfully trespassing on the grounds of another, and by that means sub-

jecting themselves to an action for damages; we cannot, therefore, we think, conclude our Treatise on the Game Laws, in a manner more acceptable to our readers, than by some observations on the law of *Trespass*.

Trespass, in the sense wherein we are now to consider it, is the entry of another man's ground without his leave, and doing some damages, however inconsiderable, to his real property; and every such entry is considered by the law (unless in particular cases) as an injury to the owner, for which an action of trespass will lie, and for which a satisfaction is recoverable, according to the malicious intent of the trespasser, and the damage actually committed. These actions were formerly carried to an iniquitous extent, and in the hands of ill-natured and illiberal persons, frequently became oppressive engines of malice against those who had committed a trespass from pure ignorance or inadvertency, and who, though nominal damages only were given, were obliged to pay the whole expense of the suit. In order, therefore, to prevent these trifling and vexatious actions, it is enacted by 44 Eliz. c. 6. and 22 and 23 Car. 2. c. 9. s. 136. that where the jury who try an action for trespass give less damages than *forty shillings*, the plaintiff shall be allowed no more costs than the damages, unless (as is provided by 8 and 9 Wil. and Mary, c. 11.) it shall appear that the trespass was *wilful and ma-*

licious (a) and is so certified to be by the judge; in which case the plaintiff shall recover full costs. An exception, however, is to be noticed in respect of inferior tradesmen, concerning whom it is enacted,

By 4 and 5 Will. and Mary, c. 23. s. 10. that every *inferior tradesman*, apprentice, or other *dissolute* person may be sued for going upon another man's ground to hunt, &c. *though he do no injury to the soil, &c.* and if found guilty shall pay *full* costs of suit. The reason for which distinction between inferior persons and others is given in the preamble to the same statute, namely, to discourage the temptation which might otherwise be afforded them of neglecting their proper business in pursuit of sport, to the ruin of themselves and families. (*As to who are deemed inferior tradesmen under this statute, see ante, p. 24.*)

It is also further provided, by 25 Eliz.

(a) A trespass is considered as *wilful*, where the person has been forewarned not to come upon the land; and *malicious*, where the trespass is committed plainly with intent to vex and distress the plaintiff. 3 *Blac. Com.* 214. And where this appears to have been the case, it should seem that the judge is bound to certify, so that he be required so to do *in court* immediately upon the trial. *Esp. Ni. Pri.* 424. 4 *Williams's Just.* 614. 2d edit.

e. 10. that *no person* shall *hawk*, or *hunt with spaniels*, in any ground where there shall be corn or grain, which shall be *eared or codded*, until the same shall be shocked, cocked; hilled, or copped, upon pain of forfeiture for every time he shall so hawk or hunt, (without the consent of the owner of the corn, &c.) the sum of 40s. to the owner of the said corn or grain.

Under these statutes relating to trespass, *qualified* as well as *unqualified* persons are equally included. A lord of a manor cannot come upon another man's ground, without being a trespasser, and he shall pay like costs with another person under similar circumstances; as, if warning be given, a lord of manor, or other qualified person, will be considered as a *malicious* trespasser, and liable to pay *full* costs, though the damages given be *under* 40s.—2 *Bac. Abr.*

If, however, a lord of a manor have a grant of *free warren* (which he sometimes has) over another man's grounds, he may justify sporting within his own franchise, though the ground be not his; in no other respect has he any greater privilege than other qualified persons.—*Ibid.*

But in some few cases, where the public good is concerned, the law *excuses* a trespass, as when done in pursuit of *badgers*, *foxes*, and other beasts of prey, because the destroying such animals is for the public good; but, in doing this, no more damage

must be done than is necessary and inevitable. (1 *Term Rep.* 334.) So that in the case of hunting a *badger or fox*, a man cannot justify *breaking the soil* to drive him out of the earth ; for though the law allows the hunting of noxious animals for the public benefit, yet it must be done in the usual and ordinary manner, and not to the destruction of another's freehold.—8 *Co.* 146. *Cro. Jac.* 321.

Having now taken notice of every thing that we think material for the sportsman's information on the subject of the game laws of this kingdom, we shall conclude with expressing our hopes, that should he at any time be disposed to avail himself of our labours, it will be in *defence of himself* and not (as has been too often done) to the *oppression of others*,

FINIS.

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